

APPEAL NO. 040230
FILED MARCH 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 5, 2004. The hearing officer determined that the appellant (claimant) had disability, resulting from the compensable injury sustained on _____, for the period beginning on July 28 and continuing through September 2, 2002. The claimant appeals the disability determination as it ends on September 2, 2002, contending that she had disability to the date of the CCH, and that the hearing officer's decision is against the great weight of the evidence. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It was undisputed that the claimant sustained a compensable injury on _____. The claimant testified that she injured her back lifting a heavy item at work. The claimant's treating doctor, Dr. A, diagnosed a lumbar strain/sprain. The claimant was taken off work on _____, and she was released to light duty on September 3, 2002. The claimant worked light duty at the preinjury wage from September 3 to September 28, 2002. The claimant was released to full duty on September 23, 2002. The claimant was incarcerated on September 28, 2002, for several days and then was subsequently terminated in early October for arguably failing to give notice to the employer of her absence. The Texas Workers' Compensation Commission approved the claimant's request for change of treating doctor to Dr. B on December 12, 2002. The claimant contends that the medical records from her second treating doctor, Dr. B, and all the other doctors except Dr. A, support her contention that her condition did not improve and that she was unable to work due to her back injury.

The sole issue before the hearing officer was whether the claimant sustained disability as a result of the compensable injury sustained on _____. Section 401.011(16) defines "disability" as the "inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The claimant had the burden to prove that she had disability. Conflicting evidence was presented on the disputed issue. A claimant's testimony alone may establish that disability has resulted from the compensable injury. Gee v. Liberty Mut. Fire Ins. Co., 765 S.W.2d 394 (Tex. 1989). Furthermore, medical records are not conclusive or binding on the hearing officer. Texas Workers' Compensation Commission Appeal No. 021994, decided September 23, 2002. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The hearing officer specifically commented in the Statement of the Evidence paragraph that the claimant failed to prove disability after September 2, 2002, by the greater weight

of credible evidence. The hearing officer plainly found the claimant's testimony not to be credible and the other doctor's opinions to be based on the claimant's "assertions and complaints." A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.) While the claimant asserts that the hearing officer rejected the opinions of other medical doctors, it is abundantly clear from the hearing officer's decision that he considered all the medical evidence, as well as the claimant's testimony, in resolving the disputed issue. Additionally, the claimant repeated the same arguments that she had asserted at the CCH, specifically that Dr. A was motivated to release the claimant to full duty because he wanted to be paid by the carrier for medical services rendered. In addressing this argument, the hearing officer essentially commented that this argument was not credible. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge